

## **Chapter 17.84**

### **APPEALS, CONDITIONAL USES AND VARIANCES**

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**17.84.010 Powers and jurisdiction relating to permitted conditional uses.**

A. The planning commission shall have the power to hear and decide, in accordance with the provisions of this title, requests for permitted conditional use or for decisions upon other special questions upon which the planning commission is authorized by this title to pass; to decide such questions as are involved in determining whether permitted conditional uses should be granted; and to grant permitted conditional uses with such conditions and safeguards as are appropriate under this title, or to deny permitted conditional uses when not in harmony with the purpose and intent of this title.

A permitted conditional use shall not be granted by the planning commission unless and until:

1. A written application for a permitted conditional use is submitted indicating the section of this title under which the permitted conditional use is sought and states the grounds on which it is requested;

2. Notice shall be given at least fifteen (15) days in advance of public hearing. The owner of the property for which permitted conditional use is sought or his or her agent shall be notified by mail. Notice of such hearings shall be posted at the property for which permitted conditional use is sought, at the city hall, and in one other public place at least fifteen (15) days prior to the public hearing;

3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;

4. The planning commission shall make a finding that it is empowered under the section of this title described in the application to grant the permitted conditional use, and that the granting of the permitted conditional use will not adversely affect the public interest;

5. Before any permitted conditional use shall be issued, the planning commission shall make written findings certifying compliance with the specific rules governing individual permitted conditional uses and that satisfactory provision and arrangement has been made concerning the following, where applicable:

a. Ingress and egress to property and proposed structures thereon with particular reference to automotive

and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe,

b. Off-street parking and loading areas where required, with particular attention to the items in subsection (A)(5)(a) of this section, and the economic, noise, glare or odor effects of the permitted conditional use on adjoining properties generally in the district,

c. Refuse and service areas, with particular reference to the items in subsections (A)(5)(a) and (b) of this section,

d. Utilities, with reference to locations, availability and character,

e. Screening and buffering with reference to type, dimensions and character,

f. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district,

g. Required yards and other open space,

h. General compatibility with adjacent properties and other property in the district.

B. Before any permitted conditional use shall be issued for a new manufactured home park, the planning commission shall determine that the park complies with the following minimum requirements:

1. A manufactured home park shall have an area of not less than two acres, nor more than fifteen (15) acres.

2. Individual manufactured home lots shall have an area not less than five thousand (5,000) square feet.

3. Mobile/manufactured homes shall be located on each space so that there will be at least a twenty (20) foot clearance between each mobile/manufactured home, a seven-foot open space between any permanently enclosed appendage, and/or mobile/manufactured home space boundary other than driveways and walkways, a ten (10) foot open space at the rear of the mobile/manufactured home, and an eight-foot space between the front of the mobile/manufactured home and the road.

4. A request for a permitted conditional use shall set forth the location and legal description of the proposed manufactured home park property, and a sketch of the proposed manufactured home park, showing dimensions, driveways, proposed locations of manufactured homes, the location of sanitary conveniences and other buildings and improvements.

5. Certification of compliance with all ordinances and regulations regarding manufactured home park licensing, and zoning, health, plumbing, electrical building, fire prevention and all other applicable ordinances and regulations shall be a prior requirement for granting the permitted conditional use.

6. Minimum roadway widths with a manufactured home park shall be:

a. Twenty (20) feet with no parking permitted;

b. Thirty (30) feet with parking permitted on one side only;

c. Forty (40) feet with parking permitted on both sides.

7. All manufactured home space

shall abut upon hard surfaced streets. Surfacing shall be Portland cement concrete and installed in compliance with city ordinances.

8. All dead-end streets shall terminate in an open space having a sixty (60) foot minimum diameter. No dead-end streets shall exceed five hundred (500) feet in length.

9. Street lights of one hundred seventy-five (175) watt luminaries at one hundred (100) feet maximum spacing shall be provided for safe movement of pedestrians and vehicles at night.

10. The owner of a manufactured home park shall provide a roadway which shall be at least twenty (20) feet in width with no parking permitted, thirty (30) feet in width with parking permitted on one side only, or forty (40) feet in width with parking permitted on both sides for the purpose of connecting the roadway system within the manufactured home park with the public highway system.

11. Every manufactured home park shall be located on a well-drained area, and the premises shall be properly graded so as to prevent the accumulation of storm or other waters.

12. Car parking areas shall be provided at the rate of at least two car spaces for each manufactured home lot and at least one of the spaces shall be located on the lot. The car parking spaces shall be surfaced with Portland cement concrete or asphalt concrete completed in place before occupancy. In no case shall parking be permitted on interior drives within twenty-five (25) feet of exterior driveway or interior intersections.

13. Each manufactured home space shall be provided with concrete pads three feet in width by four inches in depth by the length of the mobile/manufactured home, and of a width to accommodate the frame. (Ord. 386 § 2004, 2002)

#### **17.84.020 Powers and jurisdiction relating to variances.**

The planning commission shall have the power, where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the ordinance codified in this title, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any zoning regulation under this title would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this title.

A. No such variance shall be authorized by the planning commission unless it finds that the strict application of this title would produce undue hardship; such hardship is not shared generally by other properties in the same zoning district and the same vicinity; the authorization of such variance will not

be of substantial detriment to the adjacent property and the character of the district will not be changed by the granting of the variance; and the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

B. No variance shall be authorized unless the planning commission finds that the condition or situation of the property concerned or the intended use of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to this title.

C. A variance from the terms of the zoning regulations of this title shall not be granted by the planning commission unless and until a written application for a variance is submitted demonstrating that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to the other lands, structures, or buildings in the same zoning district; that literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title; that the special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same

zoning district.

D. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds of the issuance of a variance.

E. Notice of public hearing shall be given as in Section 17.84.010; the public hearing shall be held. Any party may appear in person, or by agent or by attorney; the planning commission shall make findings that the requirements of this section have been met by the applicant for a variance; the planning commission shall make findings that the requirements of this section have been met by the applicant for a variance; the planning commission shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this title; and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

F. In granting such variance, the planning commission may prescribe appropriate conditions and safeguards. Conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this title and punishable under Section 17.100.100.

G. Under no circumstances shall the planning commission grant a variance to allow a use not permissible under the terms of the zoning regulations of this title, in the district involved, or a use expressly or by implication prohibited by the terms of this title in such district. (Ord. 386 § 2005, 2002)

**17.84.030 Planning commission to have powers of administrative officer on appeals--Reversing decision of administrative officer.**

In exercising the above-mentioned powers, the planning commission may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of a majority of the planning commission shall be necessary to reverse any order, requirement, decision or determination of any such officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this title or to affect any variation in this title. (Ord. 386 § 2006, 2002)

**17.84.040 Appeals to a court of record.**

Any person or persons, jointly or severally aggrieved by a decision of the planning commission, or any taxpayer, or any officer, department, board or bureau of the city, may appeal as provided in Chapter 11-4, South Dakota Codified Laws. (Ord. 386 § 2007, 2002)

**17.84.050 Subdivision regulation variance.**

The city council shall have the power where by reason of the unusual shape of a specific piece of property, or whereby reason or exceptional topographical conditions, the strict application of the provisions of this title relating to subdivision regulation would result in extreme practical difficulties and undue hardship upon the owner of the property, to authorize a variance from such strict application without substantial detriment to the public good and without substantially impairing the intent and purpose of the provisions of this title relating to subdivision regulation. (Ord. 386 § 2008, 2002)